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Hon. Lorna G. Schofield, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

February 23, 2023

Re: ***Cypress Holdings, III, L.P. v. Hall, et al.*, Docket No. 22-cv-01243 (LGS)**
***Sport-BLX, Inc. v. Salerno, et al.*, Docket No. 22-cv-08111 (LGS)**

Dear Judge Schofield:

This firm represents Plaintiff Cypress Holdings, III, L.P. (“Cypress”) in the action entitled *Cypress Holdings, III, L.P. v. Hall, et al.*, Docket No. 22-cv-01243 (LGS) (the “Cypress Action”). This firm also represents Defendants Michael M. Salerno (“Salerno”), Northeast Professional Planning Group, Inc. (“NPPG”), and Cypress (collectively, the “Cypress Parties”) in the related action entitled *Sport-BLX, Inc. v. Salerno, et al.*, Docket No. 22-cv-08111 (LGS) (the “Sport-BLX Action”).

On October 18, 2022, Your Honor entered a Civil Case Management Plan and Scheduling Order requiring that all fact discovery be completed by March 14, 2023. (Cypress Docket, ECF No. 59; Sport-BLX Docket, ECF No. 17). Pursuant to Federal Rule of Civil Procedure 16, the Cypress Parties write to request a sixty-day extension of the March 14, 2023, fact discovery deadline. As explained below, the Cypress Parties have proceeded diligently and expeditiously with discovery. Among other things, the Cypress Parties met and conferred in good faith with opposing counsel on numerous occasions to discuss and reach agreement on a myriad of issues pertaining to discovery, including those related to electronically stored information (“ESI”). However, as set forth below, one of the originally-named Defendants has yet to produce a single document, and the objections, responses, and productions of the newly-named defendants in the Second Amended Complaint are not yet due. As a result, we would respectfully request that Your Honor grant an extension of fact discovery so that all parties can produce their documents before the commencement of depositions.

i. Document Production

On November 7, 2022, Cypress Action Defendant/Sport-BLX Action Plaintiff Sport-BLX, Inc. (“Sport-BLX”) and Cypress Action Defendant George Hall (“Hall”) propounded joint Requests for the Production of Documents and a joint First Set of Interrogatories on the Cypress Parties.

On November 21, 2022, Cypress Action Defendants GlassBridge Enterprises, Inc. (“GlassBridge”) and Joseph De Perio (“De Perio”) served their First Sets of Interrogatories and First Sets of Document Requests on Cypress. The following day, Cypress served its First Set of Interrogatories and First Request for the Production of Documents on Hall, De Perio, GlassBridge, and Sport-BLX.

On December 7, 2022, the Cypress Parties served their Written Responses and Objections to Sport-BLX and Hall's Request for the Production of Documents and First Set of Interrogatories. The Cypress Parties expressed their desire that a confidentiality order governing the production of confidential information be put in place prior to the production of any confidential documents. To that end, the Cypress Parties prepared a Stipulation and Proposed Order Governing the Production and Exchange of Confidential Information (the "Proposed Confidentiality Order"), which the Cypress Parties circulated to opposing counsel on December 8, 2022. Counsel for De Perio and Sport-BLX/Hall circulated proposed revisions to the Proposed Confidentiality Order on December 9, 2022, and December 14, 2022, respectively, and the Proposed Confidentiality Order was filed on December 19, 2022.

On December 21, 2022, the Cypress Parties served Written Responses and Objections to GlassBridge's and De Perio's First Sets of Document Requests and Interrogatories. On December 22, 2022, all Cypress Action Parties met to discuss discovery. On that same date, the Cypress Parties made their initial production of 1,612 pages of documents to Sport-BLX, Hall, De Perio and GlassBridge.¹ Also on that date, Sport-BLX, Hall, De Perio, and GlassBridge each filed their respective Written Responses and Objections to Cypress' discovery demands but produced no documents. On December 28, 2022, the parties met again to discuss search terms related to Sport-BLX's ongoing document review and production of ESI. That same day, counsel for Sport-BLX transmitted proposed search terms to be used in connection with Sport-BLX's review for potentially responsive documents.

On January 5, 2023, the Cypress Parties responded to Sport-BLX's proposed search terms with revisions to the same. On January 6, 2023, counsel for Sport-BLX and Hall wrote to counsel for the Cypress Parties objecting to Cypress' proposed additional search terms. In response, on January 9, 2023, the Cypress Parties once again noted their objection to Sport-BLX's search terms on the grounds that the terms were too narrow. Counsel for Cypress and Sport-BLX, however, expressed willingness to continue to meet and confer to fashion agreed upon search terms, and another conference was held on January 11, 2023.

On January 13, 2023—52 days after Cypress served its initial document demands—Hall produced 163 pages of documents in response. On January 24, 2023—63 days after Cypress' initial document demands, De Perio, Sport-BLX and Hall made their initial production of 63 pages and 53,340 pages, respectively.

On January 27, 2023, the parties held a fourth conference wherein counsel for GlassBridge agreed to utilize the latest search terms proposed by the Cypress Parties and advise as to whether production of documents responsive to those terms would constitute an undue burden. The Cypress Parties agreed to produce additional revised search terms if necessary and to re-run the search terms against Cypress' database to ensure all relevant and responsive documents were produced. On February 1, 2023, counsel for Sport-BLX and Hall once again requested that the Cypress Parties narrow their search terms. Cypress once again agreed, while maintaining its position that doing so did not release Sport-BLX and Hall from their obligation to produce documents and/or

¹ The Cypress Parties were the first party to either case to produce responsive documents in response to discovery requests propounded by the other side.

communications responsive to the document requests. On February 3, 2023, the Cypress Parties sent a third proposed revision to Sport-BLX/Hall's proposed search terms.

On February 10, 2023, Sport-BLX and Hall transmitted a second production of 74,371 additional pages, totaling a production of 127,712 pages of documents. Also on this date, the parties held another conference to discuss the Cypress Parties' production of responsive documents regarding Cypress' limited partners. The Cypress Parties agreed to meet with each Cypress limited partner and provide a date certain by which responsive documents and/or communications from Cypress' limited partners would be produced.² That production will be made on or before February 24, 2023. At that meeting, counsel for GlassBridge explained that a search of its database had yielded over 300,000 documents and that GlassBridge would provide a list of search terms it deemed problematic. GlassBridge has since provided the aforementioned list, however, the parties continue to negotiate with respect to the appropriate search terms to be applied to GlassBridge's document review.

As demonstrated above, the Cypress Parties have made extensive efforts to ensure timely fact discovery and have engaged in numerous conferences with the parties in order to avoid motion practice. However, given that GlassBridge has not yet produced any documents, that Sport-BLX has only recently produced the bulk of its documents on February 10, 2023, and that there is still no final agreement with GlassBridge as to the final applicable search terms, an extension of discovery is warranted to allow these parties time to make their final productions and allow the Cypress Parties (and all parties) the time needed to review the documents that are produced prior to commencing with depositions.

ii. Cypress' Filing of the Second Amended Complaint

On December 15, 2022, the Cypress Parties transmitted a copy of their Proposed Second Amended Complaint to the Cypress Action Defendants, and were informed on December 19, 2023, that consent was not given for its filing. On January 17, 2023, Cypress filed its Pre-Motion Letter for Leave to Amend its Complaint. On January 25, 2023, this Court granted Cypress' Motion to file a Second Amended Complaint, which was filed on January 27, 2023. On January 31, 2023, Cypress served the Second Amended Complaint on the newly-added Defendants. On February 7, 2023, Cypress served its First Request for Production of Documents to Cesar Baez, Christopher Johnson, Daniel Strauss, Francis Ruchalski, Sport-BLX Securities, Inc., and Clinton Group, Inc.—all newly-added Defendants to Cypress' Second Amended Complaint. Their responses and objections to Cypress' discovery requests are not due until March 9, 2023.

As set forth above, additional time is needed to complete document discovery and depositions as to all defendants. For that reason, as well as the reasons stated above, the Cypress Parties respectfully request an extension of discovery so that they have adequate time to collect and review documents and conduct depositions.

² To date, the Cypress Parties have met with each limited partner of Cypress. Each partner completed a search of their email for relevant and responsive documents and/or communications pertaining to the litigations, and no responsive emails were found.

Respectfully submitted,

/s/ A. Ross Pearlson

Member